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July 5, 2023

VIA ECF

The Honorable Robert W. Lehrburger
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Hedgeye Risk Management, LLC v. Dale et al.*, No. 21-cv-03687-ALC-RWL

Dear Judge Lehrburger:

I write on behalf of defendants Nadine Terman and Solstein Capital, LLC (the “Terman Defendants”), to raise two discrete issues with respect to Hedgeye’s document productions:

1. Following the Court’s order at ECF 536, Hedgeye agreed to provide data concerning trading by Hedgeye personnel of Exchange-Traded Funds (“ETFs”) within 48 hours of a Hedgeye Real-Time Alert (“RTA”) recommending a trade in that ETF. On June 27, 2023, Hedgeye produced a series of spreadsheets containing data relating to such trades. However, the data did not indicate the names of the individual employees and officers who made the trades, nor did it indicate the time of day when the trades were made. Both are necessary for discovery purposes. The Terman Defendants need to know the identity of the witnesses who made the trades and the trade times are relevant to the claims by the Terman Defendants of trading activity close in time to the release of the RTAs. The Terman Defendants asked Hedgeye to provide this information, but Hedgeye did not respond.

2. Also following the order at ECF 536, and after admitting that it had not previously searched and produced text messages responsive to the Terman Defendants’ document requests, Hedgeye agreed to produce the responsive text messages. Although Hedgeye produced some additional text messages, it does not appear that texts were searched and produced for all applicable topics. For example, although Hedgeye produced additional text messages relating to RTAs and its relationship with Sierpinski Capital Management, we were unable to find text messages concerning Hedgeye’s SEC registration status or its reliance on a publisher exemption to registration.


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In addition to the above, the Terman Defendants agree with and join in the Dale Defendants' letter motion for sanctions, also filed today.

Accordingly, the Terman Defendants respectfully seek an order compelling Hedgeye to: (1) produce amended spreadsheets of employee ETF trading data identifying the exact time of the trades and the identity of the individuals making the trades, (2) produce all text messages responsive to requests made by the Terman Defendants and for which Hedgeye previously agreed to provide responsive documents, including but not limited to messages concerning Hedgeye's SEC registration status or its reliance on a publisher exemption to registration.

Respectfully submitted,



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